

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

TAMARA SOPKA and AXESS HOLDING  
COMPANY LLC,

Plaintiffs,

-vs-

SKYWAY YACHT WORKS LLC, et  
al.,

Claimants.

No. 15 C 3230

Chicago, Illinois  
June 28, 2016  
9:15 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - TELEPHONE CONFERENCE  
BEFORE THE HONORABLE MILTON I. SHADUR

APPEARANCES:

For the Plaintiffs:

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For Claimant Sharon  
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## 1 APPEARANCES:

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1 MR. EASTHAM: Good morning, your Honor, James  
2 Eastham. I am local counsel for Markel American. My lead is  
3 due to be on the phone remotely today.

4 THE COURT: Okay. Before anybody else identifies  
5 himself or herself, Carol will call.

6 MR. ABEL: Hello.

7 THE CLERK: Is this Chris Abel?

8 MR. ABEL: Hello?

9 THE CLERK: Hello? Oh, wait.

10 MR. ABEL: Hello.

11 THE CLERK: Can you hear me?

12 MR. ABEL: I can.

13 THE CLERK: Okay. This is Judge Shadur's clerk in  
14 15 C 3230, In the matter of Sopka.

15 THE COURT: Counsel out in telephone land, do you  
16 want to identify yourself for the record, please. Counsel  
17 here in court, local counsel, has already done so for you.  
18 Go ahead.

19 MR. FLEMING: Good morning, your Honor, Andrew  
20 Fleming and Joshua Liebman from the law firm of Novack &  
21 Macey appearing on behalf of Creative Yacht Management.

22 THE COURT: Wait, wait, wait. What about the  
23 person on the telephone?

24 MR. FLEMING: I am sorry.

25 MR. ABEL: Good morning, your Honor, this is Chris

1     Abel in Norfolk, Virginia representing Markel American  
2     Insurance Company, sir.

3             THE COURT: Okay. Now everybody else. You have  
4     done it. Go ahead with --

5             MR. REED: Michael Reed on behalf of respondent  
6     Skyway Yacht Works.

7             MR. HOFFMAN: Ken Hoffman for the claimant Shai  
8     Wolkowicki.

9             MR. RUTKOWSKI: Anthony Rutkowski on behalf of  
10    petitioners the estate of Sopka and Axess Holding LLC.

11            MS. WILD: Hilary Wild for the estate of Ashley  
12    Haws.

13            THE COURT: Is that it?

14            MR. RIDDLE: Kris Riddle on behalf of claimant  
15    Blenner.

16            THE COURT: This -- what is before me is Markel's  
17    petition to intervene which is stated to be a petition to  
18    intervene solely for purposes of filing in the State Court  
19    system. I did have one I think obvious question about that,  
20    and that is if Markel is seeking to intervene for purposes of  
21    -- that are outlined here, and that is asking that there is  
22    going to be a modified stay and filing an interpleader, is  
23    there some reason that the interpleader is sought to be filed  
24    in the State Court system instead of, if you have federal  
25    jurisdiction, in the Federal Court so that we can link up the

1 two actions, if that is appropriate? Now, I am not urging  
2 that. I am simply asking it.

3 MR. FLEMING: Actually, your Honor, we have not  
4 actually looked at that question. However, today I did want  
5 to ask the Court's indulgence if the Court would allow us to  
6 file a written response to this petition to intervene. We  
7 think that there are a number of defects with respect to the  
8 petition. We believe it does not follow the rules. The  
9 rules with regard to a permissive intervention require that a  
10 pleading be attached to the petition. There is no such  
11 pleading. There is a motion.

12 THE COURT: I know about those things, but --

13 MR. RUTKOWSKI: There is case law that doesn't  
14 support what they are trying to do. And so we would like --  
15 we got into this case, your Honor, about two weeks ago  
16 because of a conflict between Markel and our client. We have  
17 got up to speed, but we think this is a very important  
18 petition and we would respectfully request time to file a  
19 written response. We think there is a number of issues that  
20 need to be addressed. And we will move quickly to do that.

21 But just off-the-cuff -- and I apologize for not  
22 spelling the issue that your Honor has spelled it. We have  
23 not looked at that issue as to whether the issue of the  
24 interpleader should be litigated in the Federal Court versus  
25 the State Court. But before we get to that question we have

1 so many other questions we need to address.

2 THE COURT: Assuming that there is federal  
3 jurisdiction, which is another question --

4 MR. RUTKOWSKI: Yes, your Honor.

5 THE COURT: -- but it struck me that if it were  
6 available, it might be a more orderly way -- although, you  
7 know, I don't know which one is the tail wagging the dog when  
8 we get into this kind of admiralty jurisdiction situation.  
9 There is, as the petition to intervene has said -- it is a  
10 matter of admiralty jurisdiction because it is a contract of  
11 insurance that deals with that. So if it is within the  
12 federal jurisdiction, it -- and if it is sustainable, it  
13 might be better presented here or not. I don't know.

14 But how much time do you think you will need for  
15 the response?

16 MR. RUTKOWSKI: Well, I would like 28 days if that  
17 is possible, your Honor. If your Honor would like it  
18 shorter --

19 THE COURT: Anything is possible.

20 MR. RUTKOWSKI: I would like 28 days because I do  
21 have a pretrial order due late -- due on July 8th in front of  
22 Judge Guzman. And so I would like the 28 days, if possible,  
23 to file my response.

24 THE COURT: Anybody else?

25 MR. RUTKOWSKI: Your Honor, on behalf of the Axess

1 Holding and the estate of Sopka, the majority of what the  
2 petition is is actually directed towards my clients. And I  
3 concur with counsel. I spoke with Mr. Abel yesterday. What  
4 we talked about doing -- because we don't want to waste the  
5 Court's time -- as you pointed out there is clearly an issue  
6 as to whether if they were allowed to file this, whether it  
7 should be filed here or should be filed in State Court.

8 As counsel has also pointed out, though, there is  
9 questions as to whether they should be allowed to intervene  
10 and, if so, whether the stay should be modified.

11 THE COURT: Yes.

12 MR. RUTKOWSKI: Rather than have a series of  
13 briefs, Mr. Abel and I discussed the idea of briefing the  
14 issues about the petition to intervene since the only reason  
15 for Markel to intervene in this case is with respect to the  
16 motion to modify the stay.

17 THE COURT: Right.

18 MR. RUTKOWSKI: And I believe it is Mr. Abel's  
19 position, not necessarily mine, that he would like to modify  
20 the stay so he could go file in State Court. We can  
21 certainly address that issue in the briefs, if the Court  
22 would like us to, but I agree with defense counsel the  
23 threshold issue here is intervening for the limited purpose  
24 that they have and, if so, if they could intervene and be  
25 able to modify the stay. We think that we could address both

1 of those points in one set of briefs to the Court. I had  
2 talked with Mr. Abel about us doing that where -- I believe  
3 before when this issue was before you before it was  
4 withdrawn, we were going to file a response, and then you  
5 wanted us back before you again --

6 THE COURT: Yes.

7 MR. RUTKOWSKI: -- before a reply was filed. Mr.  
8 Abel and I agreed that we would go until July 28th, which  
9 would give counsel slightly more than 28 days and allow for  
10 the holiday and such. And we would be able to respond to the  
11 issue regarding the petition as well as the modification --  
12 the motion to modify the stay,

13 THE COURT: Okay.

14 MR. RUTKOWSKI: So that we could deal with both of  
15 those.

16 And then the only caveat to that is both Mr. Abel  
17 and I -- I don't know about defense counsel's schedule -- we  
18 are both out of the office the first week in August. So --

19 THE COURT: Okay. Then here is the story: I don't  
20 -- you are certainly entitled to respond. And it is not  
21 going to get in the way of a lawsuit overall to set a month  
22 for that purpose. So I will grant until July 28 to respond  
23 to the present petition to intervene, and that is whoever is  
24 going to file a response, you can do it jointly,  
25 individually, however you work it. All right?



1           So -- and then what I think makes sense -- you are  
2 going to be gone you say the first week in August?

3           MR. RUTKOWSKI: Yes, sir.

4           MR. FLEMING: Your Honor, I am starting my trial in  
5 front of Judge Guzman on August 8th. It is set for three  
6 weeks. If it is possible -- I don't know if it is possible  
7 to do it right before August 8th or --

8           THE COURT: Why? When does he start his trials?

9           MR. FLEMING: The trial starts August 8 9:00  
10 o'clock.

11          THE COURT: No. What time does he --

12          MR. FLEMING: Oh, 9:00 o'clock on August 8.

13          THE COURT: I can give you an 8:45.

14          MR. FLEMING: I can be here, Judge, yes, sir.

15          THE COURT: You say it is starting on the 8th?

16          MR. FLEMING: Yes, August 8 we start the trial.

17          THE COURT: How is August 8 on your end?

18          MR. RUTKOWSKI: That would be fine, your Honor.

19          THE COURT: All right.

20          MR. ABEL: Judge, this is Chris Abel in Norfolk.  
21 Judge, Mr. Rutkowski has indicated we are both out the first  
22 week of August. I am actually flying back from Europe the  
23 night of the 7th and morning of the 8th, so I am very much  
24 concerned about an 8:45 kickoff that day.

25          THE COURT: That is an Eighth Amendment violation,

1 cruel and unusual punishment. I can give you -- if the 9th  
2 is not bad. I mean his trial is going to be ongoing, so --

3 MR. RUTKOWSKI: That is fine. The 9th would be  
4 fine, your Honor.

5 THE COURT: How is Tuesday the 9th for you? Will  
6 that give you enough time to recuperate?

7 MR ABEL: Yeah, I think that would be fine, Judge.  
8 If I understand, that would be a date for a status conference  
9 to decide if a reply brief is required?

10 THE COURT: That is simply a status date to find  
11 out whether the parties had met head on or whether you need a  
12 time for reply. Understood?

13 MR ABEL: Yes, your Honor. That be would fine.

14 THE COURT: Okay. So status then 8:45 on Tuesday  
15 August 9th.

16 Thank you all.

17 MR. RUTKOWSKI: Thank you, your Honor.

18 MS. WILD: Thank you, Judge.

19 MR. FLEMING: Thank you, your Honor.

20 MR ABEL: Thank you, Judge.

21 (Which were all the proceedings heard.)  
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CERTIFICATE

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

s/Rosemary Scarpelli/

Date: July 22, 2016